

John R. Kaiser

February 28, 2019

The Honorable Joseph F. Bianco
U.S. District Court for the Eastern District of NY
100 Federal Plaza
Central Islip, NY 11722

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ FEB 28 2019 ★

LONG ISLAND OFFICE

Re: United States of America v. Phil Kenner
Ken Jowdy – Diamante Cabo San Lucas, LLC
Forfeiture Proceeding and Jowdy Declaration

Dear Judge Bianco,

I testified at the trial of Phil Kenner and Tommy Constantine and worked at Diamante Cabo San Lucas, LLC, overseeing all facets of construction for about 5 years. I am very familiar with both Ken Jowdy and the operations of the Diamante Resort.

Although Danske Bank, some homeowners, and a few hockey players have written this Court that "unindicted co-conspirator" Ken Jowdy is a great manager and that the overall operations of Diamante are going strong, I have a more accurate and realistic view of both Diamante and Jowdy.

Thus -- non-victim!!

Jowdy would like the Court to think Kenner stole \$7 Million dollars from the Hockey players and others, and as a result only Baja Ventures should be forfeited. However, as noted in the trial, Baja Ventures was transferred to me due to the unpaid Kenner loan. Jowdy fails to tell the court that in 2014, Jowdy signed documents drafted by his brother-in-law, attorney Bill Najem, to transfer Baja Ventures to me because of a \$1.85 Million Dollar loan document Kenner had signed. Jowdy seems to try and say "just take Kenner's interest in Baja Ventures and leave me with the rest of the money."

Jowdy is trying to fool the Court into thinking he was an innocent by-stander that had no idea that Kenner was stealing money from people like myself. But that is completely un-true. Jowdy and Kenner worked hand-in-hand for years on buying jet airplanes, cars, houses, condos, rubies, and a number of land development projects with victims money. Bill Najem (who is Jowdy's brother in law) was the attorney on the Jowdy/Kenner Northern Property in Mexico (el Rosario project) and drafted a private placement for the investors. However, Bill Najem, also the attorney for Kenner and Jowdy on the Hawaii development and Diamante project, did not bother doing a private placement for Diamante or Hawaii development and instead Jowdy just took investors money from Kenner which allowed Jowdy to get a 50% interest in the Diamante Project without putting up a penny. Effectively the investors provided funds to Kenner and these funds were diverted and used by Jowdy to gain his interest in Diamante.

Furthermore, at the Diamante closing, Lehman Brother's employee Masood Bhatti tells Jowdy that Lehman requires Jowdy to "put money" into the deal. Jowdy, penniless at the time, transfers 5% of the worthless el Rosario project to Kenner for \$2.5 Million Dollars. Jowdy wants the Court to believe that the source of funds came from Kenner, but in fact the \$2.5 Million Dollars was all money from victims. (please note that el Rosario was funded by many of the same victims).

Before Jowdy met Kenner, he was an out of work bartender that failed in opening a couple of bars in New York. Kenner knew Jowdy was foolish enough to help Kenner steal and launder money taken from Kenner's victims. To have Jowdy tell the Court that anyone other than a criminal like Kenner would give him 50% interest in Diamante because he was a good operator is insanity. Jowdy never had a penny before he met Kenner.

Jowdy also cries to the Court that the Government is interfering with his attempt to get Silverpeak Real Estate Partners to "invest" in Diamante to help Kenner's victims recover their investments. Jowdy didn't tell the Court that Silverpeak is a company run by his close friend Masood Bhatti, or that Jowdy was paying Diamante funds to Silverpeak \$150,000 to \$200,000 every month to find "investors" or "loans" for Diamante. Jowdy also didn't tell the Court that Masood Bhatti has a "secret interest" in Diamante. Jowdy would like the Court to think Bhatti was on the verge of "investing" in Diamante and "but for" the Government, the deal would have happened. I can only say thank God for the Government, otherwise the victims would have been victimized again.

I was the person who complained to the Government that Jowdy was trying to sell property below market value to his close friend, Jeff Marks for \$2.5 Million Dollars. The real value of the San Marcus property was at least \$7 Million Dollars and Jowdy said in his Declaration that the "arms-length" transaction would be a good thing. I agree that the sale of the San Marcos property would be a good thing, a good thing for Jeff Marks and Jowdy.

Jowdy complains that the "only" money that touched Diamante was the \$7 Million Dollar down-payment and forfeiture should be limited to Baja Ventures. I believe Jowdy received upwards of \$30 Million Dollars from Kenner (taken from his victims) over the years and spent most of the money on wasted schemes and projects. Putting aside the \$7 Million Dollar down-payment, Jowdy also received millions from Kenner (including mine) before and after the closing of Diamante.

Today, Jowdy and his brother Taffy have numerous companies that were started with Diamante funds but generated money only for the Jowdys. For example, Ken Jowdy organized a Mexican concrete company called Con K Mex S de RL De CV that supplies all the concrete and block to Diamante. Jowdy also created Terraplana Project RL de CV to do excavation work at Diamante. Cabo Automation S de RL de CV is owned by either Ken or his brother Taffy, and is the company that installs all the audio-visual equipment at Diamante. Taffy Jowdy also owns Baja Drive Services, which is a fleet of taxis that shuttle guests around Cabo. I believe all of the

assets of these companies were paid for with Diamante money and hidden from both Danske Bank and Diamante investors.

In downtown Cabo, Ken Jowdy used Diamante money to fund his personal trainer's fitness center and hid the flow of money through his Mexican attorney. This fitness center is completely unrelated to Diamante.

I believe that Jowdy has been able to divert funds from Diamante for his own use by various schemes including fraudulent draw requests. Jowdy submits draws to Danske Bank and identifies certain works. Instead of using those funds for such works, Jowdy uses these funds per the Danske Bank draw requests for whatever he wants and commonly not for the specified draw request. For example, one sub-contractor was consistently owed hundreds of thousands of dollars for work he completed. Jowdy and his brother would say they didn't have the money even though I believe they submitted draws for the specific work performed and received the money from Danske. The Jowdys just choose not to pay the particular contractor. While I was present in Diamante, Diamante would consistently owe about \$10 Million Dollars to contractors for work on Diamante that Jowdy didn't pay and can result in liens against the entire project. I don't think Danske has any idea of the money owed to contractors at this time.

The Danske Bank employees that have visited Diamante could have easily learned of the undisclosed Millions of Dollars owed to contractors by simply talking to the individual contractors while in Cabo. Instead, these bankers rent a hotel room in downtown Cabo but really stay comp-free on site at Diamante or at Jowdy's home. The Bankers and Jowdy seemed to be attached at the hip and more interested in hanging out in the restaurant eating and drinking than speaking to contractors. I saw the person who acted as the loan servicer review documents but never looking at the actual infrastructure (which may or may not have been completed).

I also think Jowdy's home was built with a portion of Diamante's money and the lot on which Jowdy's house sits was never paid for. Jowdy used contractors that work for Diamante to build his home, but never paid all the contractors for the completed work on his home.

Perhaps the most disturbing suggestion by Jowdy is that he single handedly saved Diamante after the horrible hurricane in 2014. The reality is that Jowdy and his brother Taffy ran out of Cabo the day before the hurricane made landfall in Cabo and left the hotel guests and staff to fight for survival. I and a few others stayed with the guests and staff throughout the hurricane and its aftermath, and then worked to rebuild Diamante. Jowdy, showed up a few weeks later on Jeff Marks private jet (the same person trying to buy San Marcos for below market value). Not exactly the hero he portrays himself as.

I appreciate that people like Mark Wolinsky think Jowdy is a good guy who has been doing a good job overseeing Diamante. I believe Mr. Wolinsky is not informed of the total fraud that Jowdy is and continues to be. Mr. Wolinsky is concerned that the Government will use the

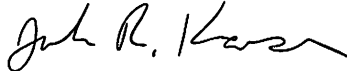
forfeiture proceedings to harm the project. I say that if Jowdy is allowed to continue his Ponzi schemes that the project will go under in the very near future.

Diamante has sold well over \$500 Million Dollars of real estate/time shares. Not a single cent has gone back to the victims and Jowdy has told me that "the hockey guys will never see a dime" because they said he was a crook.

Perhaps Jowdy will say that I am a just a disgruntled employee, but nothing is further from the truth as me and my guys were dedicated to elevating the building standards to the highest in the industry and the truth of the matter is that I was let go because Jowdy believed I was speaking to the Government during the forfeiture proceedings. I have documents and other irrefutable evidence of what was said by Jowdy during my time at Diamante. I am ready to testify under oath and provide documents to the Court to substantiate the above.

I am submitting this letter today because I see Jowdy has once again started a campaign of wining and dining people who don't know all the facts to say what a great guy he is. He even invited Michael Peca and his wife to Cabo for a free trip, which was not accepted.

Very truly yours,



John R. Kaiser